



ITG News

Keeping First Nations Informed

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Message From The Director

As I write, we have just completed the initial meetings to listen to tribal input on the development of an IRS/Tribal Consultation Policy. The 12 meetings held during the past nine months took us to every area of Indian Country. While at times it seemed that we would never complete the meeting process, every one of them provided us with valuable ideas and was an enriching experience. I was particularly pleased by the enthusiastic response we received from many of the participants, and the open exchange of ideas not only gave us critical information from which to begin to frame a policy, but also gave us feedback on the successes and failures of our current relationship with tribes.

I want to thank each of you that took the time to contribute to this process. I realize that many of you were not able to join us. I also realize that many of you may still wish to submit comments and share ideas. That opportunity will arise starting in late January as we embark on the second phase of the policy development process.

By January 31st we will post a summary of each of the 12 meetings on our web site at www.irs.gov/tribes. I encourage each of you to review the comments contained therein. We will incorporate a link that will enable further comments to be submitted for a 90 day period, so that everyone can provide feedback on the input from the meetings. Following that period, we will begin to create a draft Consultation Policy that will be further shared for comment as we proceed to the final stages.

Once again, thanks to everyone who has participated to date. I look forward to the continuing involvement by all interested parties as we craft a policy that best meets the needs of all parties.

Christie Jacobs



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To add your name or e-mail address to our mailing list, please contact us via e-mail at Michelle.L.Risk@irs.gov, or call Michelle L. Risk at (602) 207-8682.

Account or Tax Questions??
Call Customer Account Services at
1-877-829-5500



On-Line Employment Tax Guide

Employees from the office of Indian Tribal Governments recently completed a detailed Employment Tax Guide for Tribal Governments that has been posted to the ITG Internet site at www.irs.gov/tribes. The final document contains extensive narrative on withholding, deposit, and return filing requirements, as well as discussion on taxable benefits and remittance issues. Detailed examples are included as an aid to the proper completion of various forms.

We hope that this Guide is a useful reference source. We intend to update it regularly so that it remains current. We welcome your comments, as well as suggestions for further enhancements to both this on-line guide and our web site in general.

Federal Unemployment Tax

The Consolidated Appropriations Act of 2000 provided that tribal entities did not have to pay Federal Unemployment Tax (FUTA) or file Forms 940 if they participated in State Unemployment Tax (SUTA) programs under either a contributory or reimbursement basis. While SUTA participation could result in savings to tribes, the Act also mandated that the electing tribal entity remain in compliance with the state programs in order to secure relief from FUTA. Any failure to pay amounts due to the state unemployment program results in the reactivation of the requirement to pay federal unemployment tax.

While it may seem that this change is relatively simple, it has added complexities. One issue is the need for the IRS and State Unemployment agencies to exchange information on tribal participation and compliance with SUTA. An additional complexity is the need to ensure that our records accurately reflect the filing requirement for each tribal entity, and are continually updated as SUTA participation and compliance changes.

As a result of these complexities, we have encountered several situations where tribes have received IRS notices soliciting Form 940, even though they are participating in SUTA and are in full compliance. We have determined that most of these notices are in error, and we are completing steps to correct our records. We apologize for any inconvenience, but we cannot guarantee that additional errors will not occur. If your entity receives a notice regarding Form 940, but is participating in SUTA and is in full compliance, **[please contact your ITG Specialist as soon as possible](#)**. We will investigate the matter, and either make the necessary correction in our records, or advise you why the notice was received.

Our web site at www.irs.gov/tribes contains an extensive listing of Frequently Asked Questions, that may assist you in resolving issues, including employment tax questions. The site also allows for the submission of e-mail inquiries if you cannot locate an answer, or cannot reach your assigned ITG Specialist for assistance.



Tax Schemes in Indian Country

Abusive schemes to avoid taxation are a current area of focus by both the Internal Revenue Service and Congress. While tax shelters and offshore schemes have existed for several decades, they are receiving renewed interest in an era of globalization of our economy, and tight fiscal constraints for both businesses and governments.

Promoters of schemes to avoid or evade taxation have continually devised new “products” to market to anyone interested in saving money (and that will always be a large audience). In recent years, they have focused some attention on Indian tribes, with particular emphasis on exploiting their tax status as a government. The schemes include, but are not limited to:

- § joint ventures between tribes and outside parties, where income, deductions, and capital gains are not allocated between the parties during the life of the venture in the same manner as the amount of each party's investment,
- § the misuse of sections of the law intended to benefit tribal entities, such as attempting to secure relief from FUTA by misrepresenting an entity as being tribally-owned, and
- § the misuse of tribal sovereignty or tribal enterprises to attempt to hide financial transactions from scrutiny by regulatory authorities.

If you are approached by someone who purports to have a business opportunity that is “too good to be true”, you need to be wary. Key considerations should include:

- § Is this the type of venture that governments usually enter?
- § Is the venture adequately supported by a reliable legal opinion from a disinterested third party?
- § Is the financial return equally balanced between the tribe and outside participants?
- § Is there substance to the transaction, or is it principally motivated as a tax avoidance scheme?
- § Is the promoter promising revenue to the tribe in exchange for tax savings to a third party?
- § What oversight role in the venture will the tribe have?

The office of Indian Tribal Governments wants to work with tribes to ensure that promoters of abusive schemes do not gain a foothold in Indian country. To that end, we encourage you to contact us if you are approached by anyone promoting what appears to be an abusive scheme. We will be creating a link on our web site that will include updates on identified schemes, as well as an e-mail link to report any schemes. In the interim, you can contact Ken Voght by telephone at (716) 686-4860, or by e-mail at kenneth.g.voght@irs.gov to discuss or report schemes.

The office of Indian Tribal Governments is forming a special unit to work with tribes on this issue. Our Abuse Detection And Prevention Team welcomes the involvement of any tribal stakeholders in addressing this area, and ensuring that outside parties do not attempt to use tribal sovereignty and status as a cover for illegal or unethical activities. By partnering together in this area we can meet the interests of all governments in protecting revenues and mitigating potential problems for the future.



Taxable Fringe Benefits: Accountable vs. nonaccountable plans

Are your employees paying too much in taxes as a result of using a nonaccountable plan?

By Anna Crowder, ITG Specialist in Albuquerque, NM

Stipends: A stipend is defined as a fixed sum of money paid periodically for services or to defray expenses. The fact that remuneration is termed a "fee" or "stipend" rather than salary or wages is immaterial. Wages are **generally** subject to employment taxes and should be reported on Form W-2.

IRS Publication 15, Circular E, Employer's Tax Guide, defines employee business expense reimbursements. A reimbursement or allowance arrangement is a system by which you substantiate and pay the advances, reimbursements, and charges for your employees' business expenses. How you report a reimbursement or allowance amount depends on whether you have an **accountable or a nonaccountable plan**. If a single payment includes both wages and an expense reimbursement, you must specify the amount of the reimbursement.

These rules apply to all ordinary and necessary employee business expenses that would otherwise qualify for a deduction by the employee.

Accountable plan: To be an accountable plan, your reimbursement or allowance arrangement must require your employees to meet all three of the following rules.

- 1) They must have paid or incurred deductible expenses while performing services as your employees.
- 2) They must adequately account to you for these expenses within a reasonable period of time.
- 3) They must return any amounts in excess of expenses within a reasonable period of time.

Amounts paid under an accountable plan are not wages and are not subject to income tax withholding and payment of social security, Medicare and Federal unemployment (FUTA) taxes. (*Reminder: Announcement 2001-16 indicates which Indian tribes are not subject to FUTA taxes.*)

If the expenses covered by this arrangement are not substantiated or amounts in excess of expenses are not returned within a reasonable period of time, the amount is treated as paid under a nonaccountable plan. This amount is subject to income tax withholding and payment of social security, Medicare, and FUTA taxes for the first payroll period following the end of the reasonable period.

A reasonable period of time depends on the facts and circumstances. Generally, it is considered reasonable if your employees receive the advance within 30 days of the time they incur the expense, adequately account for the expenses within 60 days after the expenses were paid or incurred, and they return any amounts in excess of expenses within 120 days after the expense was paid or incurred. Also, it is considered reasonable if you give your employees a periodic statement (at least quarterly) that asks them to either return or adequately account for outstanding amounts and they do so within 120 days.

Nonaccountable plan: Payments to your employee for travel and other necessary expenses of your business under a nonaccountable plan are wages and are treated as supplemental wages and subject to income tax withholding and payment of social security, Medicare, and FUTA taxes. Your payments are treated as paid under a nonaccountable plan if:



Continued from Page 4:

- 1) Your employee is not required to or does not substantiate timely those expenses to you with receipts or other documentation or
- 2) You advance an amount to your employee for business expenses and your employee is not required to or does not return timely any amount he or she does not use for business expenses.

See section 7 of Publication 15 for more information on supplemental wages.

Per diem or other fixed allowance: You may reimburse your employees by travel days, or miles, or some other fixed allowance. In these cases, your employee is considered to have accounted to you if the payments do not exceed rates established by the Federal Government. The 2002 standard mileage rate for auto expenses is 36.5 cents per mile. The rate for 2003 is 36 cents per mile. The 2004 standard mileage rate for auto expenses is 37.5 cents per mile. The government per diem rates for meals and lodging in the continental United States are listed in Publication 1542, Per Diem Rates. Other than the amount of these expenses, your employees' business expenses must be substantiated (for example, the business purpose of the travel or the number of business miles driven).

If the per diem or allowance paid exceeds the amounts specified, you must report the excess amount as wages. This excess amount is subject to income tax withholding and payment of social security and Medicare taxes. Show the amount equal to the specified amount (i.e., the nontaxable portion) in box 12 of the Form W-2, using code L.

IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits, discusses "Are Fringe Benefits Taxable?" If the recipient of a taxable fringe benefit is your employee, the benefit is subject to employment taxes and must be reported on Form W-2, Wage and Tax Statement. However, you can use special rules to withhold, deposit, and report the employment taxes. Refer to section 4 of Publication 15-B, Rules for Withholding, Depositing and Reporting.

Arizona Tribes Kick off another VITA filing season

January 2004 officially kicks off the 2003 filing season. ITG Specialists have been assisting the tribes in Arizona with the Volunteer Income Tax Assistance (VITA) program began for the previous two tax seasons since 2001. The volunteers at the Native American VITA sites in Arizona have been successful in providing free tax assistance to the tribal members and the employees of the tribe.

One thousand seven hundred and ninety seven tax (1,797) tax returns were electronically filed at the Arizona Native American VITA sites. This saved the tribal members and tribal employees approximately \$200,000.00 in filing fees that would have been paid to preparers. This means more money in the hands of the tribal members and employees who used the VITA program to have their tax returns sent electronically to the IRS.

Special recognition goes to the Tohono O'odham Nation. The volunteers for the 2002 filing season electronically filed over 701 tax returns. This was a marked improvement of 825 % from the 2001 filing season when only 85 tax returns were electronically filed. Special recognition goes to the Tohono O'odham Nation VITA Volunteer, **Ubaldo Aguiniga** who alone prepared over 200 of the 701 tax returns electronically filed in the 2002 filing season.

In the words of Marvin Ford, IRS employee and instructor: "**Happy Holidays and Many Happy Returns**".



Year End Tax Reminders

Contributed by Lucille Martinez, Flagstaff ITG Specialist

Forms W-4

- Annual Recertification for exempt Employees
- Annual Offer to Employees to Update Form W-4
- Procedure to Document Submission of Questionable Forms W-4

Forms 941

- Line 2 Form 941
- Third Party Sick Pay
- Review of Prior Period Reporting and Current Period Correction with Form 941c

Form 941 - Schedule B

- Reflect liability Dates and Amounts, not Deposit Dates and Amounts
- Verify Schedule is Attached to Form 941 and a Copy is Retained

Forms W-2 and W-3

- Reconciliation to Forms 941, Including Line 2
- Reconciliation Exception for Certain 3rd Party Sick Pay Arrangements
- Form W-2 Preparation and Filing Reminders
- Form W-3 Preparation and Filing Reminders

Forms W-2

- Extensions to File (Form 8809/30 Days)
- Magnetic Media/Electronic Reporting Requirement
- Deceased Employees
- Employee's Taxes Paid by Employer
- Taxable Working Condition Fringe Benefits
- Repayment of Prior Year Wages by Employees
- Students
- Dependent Care Benefits
- Distributions from Non-qualified Plans
- Elective Deferrals
- Sick Pay
- Substantiated Employee Business Expenses
- Excludible Moving Expense Reimbursements
- Box 14- Additional Information at the Employer's Election

Forms W-3

- Box b- Check Both 941 and 3rd Party Sick Pay if Reporting Sick Pay Payments Made by a 3rd Party
- Include Totals of W-2 Boxes 10, 11, and 12 (Deferred Compensation Amounts -codes D-H & S Only)
- 3rd Party Sick- Pay Boxes 13 & 14

Forms 1099MISC

- Verify Taxpayer Identification Numbers (TIN) Used are Possible Numbers
- Verify Recipients' Names and Taxpayer Identification Numbers (TIN) are Consistent
- Impose Back-up Withholding if No Valid Taxpayer Identification Numbers (TIN) on File when Possible
- Payments Reportable to Corporations
- Payments for Services to a Limited Liability Company (LLC)

Forms 1099MISC

- Deceased Employee's Wages Paid to Estate or Beneficiary
- Not Used for Payments to Non-Resident Aliens



Federal Tax Calendar for First Quarter 2004

January 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5 * Payroll date 12/27-12/30	6	7 * Payroll date 12/31-1/2	8	9 * Payroll date 1/3-1/6	10 Employees report December tips to employer
11	12 Employees report December tips to employer	13	14 * Payroll date 1/7-1/9	15 ** Monthly payroll/non-payroll tax deposit for December	16 * Payroll date 1/10-1/13	17
18	19	20	21	22 * Payroll date 1/14-1/16	23 * Payroll date 1/17-1/20	24
25	26	27	28 * Payroll date 1/21-1/23	29	30 * Payroll date 1/24-1/27	31

February 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Issue Forms W-2/W-2G/1099 to recipients of income	3	4 * Payroll date 1/28-1/30	5	6 * Payroll date 1/31-2/3	7
8	9	10 Employees report January tips to employer	11 * Payroll date 2/4-2/6	12	13 * Payroll date 2/7-2/10	14
15	16	17 ** Monthly payroll/non-payroll tax deposit for January	18	19 * Payroll date 2/11-2/13	20 * Payroll date 2/14-2/17	21
22	23	24	25 * Payroll date 2/18-2/20	26	27 * Payroll date 2/21-2/24	28
29						

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.



March 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 File Forms W-3 and 1096 filed by paper or magnetic media	2	3 * Payroll date 2/25-2/27	4	5 * Payroll date 2/28-3/2	6
7	8	9	10 * Payroll date 3/3-3/5 Employees report February tips to employer	11	12 * Payroll date 3/6-3/9	13
14	15 ** Monthly payroll/non-payroll tax deposit for February	16	17 * Payroll date 3/10-3/12	18	19 * Payroll date 3/13-3/16	20
21	22	23	24 * Payroll date 3/17-3/19	25	26 * Payroll date 3/20-3/23	27
28	29	30	31 * Payroll date 3/24-3/26 File Forms W-3 and 1096 filed electronically			

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.

**= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed

Return Filing Dates

By February 2

File Form 941 for the fourth quarter of 2003. If the tax was deposited in full and on time, file by February 10.

File Form 940 if not participating and compliant with State Unemployment, or not an entity 100% owned by the tribe. If the tax was deposited in full and on time, file by February 10.

File Form 730 on applicable wagers accepted during December 2003.

File Form 945 for 2003. If the tax was deposited in full and on time, file by February 10.

By March 1

File Form 730 for applicable wagers accepted during January 2004.

File Form 8027 for food and beverage establishments meeting the 80 equivalent hour test.

By March 31

File Form 730 for applicable wagers accepted during February 2004.

For entities with Tip Rate Determination Agreement or a Gaming Industry Tip Compliance Agreement, file the annual report required by the agreement